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HOUSE BILL 277

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO HUMAN RIGHTS; CLARIFYING PROVISIONS REGARDING  
UNLAWFUL DISCRIMINATION BASED UPON SEXUAL ORIENTATION OR GENDER  
IDENTITY; AMENDING SECTIONS OF THE HUMAN RIGHTS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 28-1-7 NMSA 1978 (being Laws 1969,  
Chapter 196, Section 7, as amended) is amended to read:

"28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an  
unlawful discriminatory practice for:

A. an employer, unless based on a bona fide  
occupational qualification or other statutory prohibition, to  
refuse to hire, to discharge, to promote or demote or to  
discriminate in matters of compensation, terms, conditions or  
privileges of employment against any person otherwise qualified  
because of race, age, religion, color, national origin,

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1 ancestry, sex, [~~sexual orientation, gender identity~~] physical  
2 or mental handicap or serious medical condition, or, if the  
3 employer has fifty or more employees, spousal affiliation;  
4 provided, however, that 29 U.S.C. Section 631(c)(1) and (2)  
5 shall apply to discrimination based on age; or, if the employer  
6 has fifteen or more employees, to discriminate against an  
7 employee based upon the employee's sexual orientation or gender  
8 identity;

9 B. a labor organization to exclude a person or to  
10 expel or otherwise discriminate against any of its members or  
11 against any employer or employee because of race, religion,  
12 color, national origin, ancestry, sex, sexual orientation,  
13 gender identity, spousal affiliation, physical or mental  
14 handicap or serious medical condition;

15 C. any employer, labor organization or joint  
16 apprenticeship committee to refuse to admit or employ any person  
17 in any program established to provide an apprenticeship or other  
18 training or retraining because of race, religion, color,  
19 national origin, ancestry, sex, sexual orientation, gender  
20 identity, physical or mental handicap or serious medical  
21 condition, or, if the employer has fifty or more employees,  
22 spousal affiliation;

23 D. any person, employer, employment agency or labor  
24 organization to print or circulate or cause to be printed or  
25 circulated any statement, advertisement or publication, to use

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1 any form of application for employment or membership or to make  
2 any inquiry regarding prospective membership or employment that  
3 expresses, directly or indirectly, any limitation, specification  
4 or discrimination as to race, color, religion, national origin,  
5 ancestry, sex, sexual orientation, gender identity, physical or  
6 mental handicap or serious medical condition, or, if the  
7 employer has fifty or more employees, spousal affiliation,  
8 unless based on a bona fide occupational qualification;

9 E. an employment agency to refuse to list and  
10 properly classify for employment or refer a person for  
11 employment in a known available job, for which the person is  
12 otherwise qualified, because of race, religion, color, national  
13 origin, ancestry, sex, sexual orientation, gender identity,  
14 spousal affiliation, physical or mental handicap or serious  
15 medical condition, unless based on a bona fide occupational  
16 qualification, or to comply with a request from an employer for  
17 referral of applicants for employment if the request indicates  
18 either directly or indirectly that the employer discriminates in  
19 employment on the basis of race, religion, color, national  
20 origin, ancestry, sex, sexual orientation, gender identity,  
21 spousal affiliation, physical or mental handicap or serious  
22 medical condition, unless based on a bona fide occupational  
23 qualification;

24 F. any person in any public accommodation to make a  
25 distinction, directly or indirectly, in offering or refusing to

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1 offer its services, facilities, accommodations or goods to any  
2 person because of race, religion, color, national origin,  
3 ancestry, sex, sexual orientation, gender identity, spousal  
4 affiliation or physical or mental handicap, provided that the  
5 physical or mental handicap is unrelated to a person's ability  
6 to acquire or rent and maintain particular real property or  
7 housing accommodation;

8 G. any person to:

9 (1) refuse to sell, rent, assign, lease or  
10 sublease or offer for sale, rental, lease, assignment or  
11 sublease any housing accommodation or real property to any  
12 person or to refuse to negotiate for the sale, rental, lease,  
13 assignment or sublease of any housing accommodation or real  
14 property to any person because of race, religion, color,  
15 national origin, ancestry, sex, sexual orientation, gender  
16 identity, spousal affiliation or physical or mental handicap,  
17 provided that the physical or mental handicap is unrelated to a  
18 person's ability to acquire or rent and maintain particular real  
19 property or housing accommodation;

20 (2) discriminate against any person in the  
21 terms, conditions or privileges of the sale, rental, assignment,  
22 lease or sublease of any housing accommodation or real property  
23 or in the provision of facilities or services in connection  
24 therewith because of race, religion, color, national origin,  
25 ancestry, sex, sexual orientation, gender identity, spousal

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1 affiliation or physical or mental handicap, provided that the  
2 physical or mental handicap is unrelated to a person's ability  
3 to acquire or rent and maintain particular real property or  
4 housing accommodation; or

5 (3) print, circulate, display or mail or cause  
6 to be printed, circulated, displayed or mailed any statement,  
7 advertisement, publication or sign or use any form of  
8 application for the purchase, rental, lease, assignment or  
9 sublease of any housing accommodation or real property or to  
10 make any record or inquiry regarding the prospective purchase,  
11 rental, lease, assignment or sublease of any housing  
12 accommodation or real property that expresses any preference,  
13 limitation or discrimination as to race, religion, color,  
14 national origin, ancestry, sex, sexual orientation, gender  
15 identity, spousal affiliation or physical or mental handicap,  
16 provided that the physical or mental handicap is unrelated to a  
17 person's ability to acquire or rent and maintain particular real  
18 property or housing accommodation;

19 H. any person to whom application is made either for  
20 financial assistance for the acquisition, construction,  
21 rehabilitation, repair or maintenance of any housing  
22 accommodation or real property or for any type of consumer  
23 credit, including financial assistance for the acquisition of  
24 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

25 (1) consider the race, religion, color,

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1 national origin, ancestry, sex, sexual orientation, gender  
2 identity, spousal affiliation or physical or mental handicap of  
3 any individual in the granting, withholding, extending,  
4 modifying or renewing or in the fixing of the rates, terms,  
5 conditions or provisions of any financial assistance or in the  
6 extension of services in connection with the request for  
7 financial assistance; or

8 (2) use any form of application for financial  
9 assistance or to make any record or inquiry in connection with  
10 applications for financial assistance that expresses, directly  
11 or indirectly, any limitation, specification or discrimination  
12 as to race, religion, color, national origin, ancestry, sex,  
13 sexual orientation, gender identity, spousal affiliation or  
14 physical or mental handicap;

15 I. any person or employer to:

16 (1) aid, abet, incite, compel or coerce the  
17 doing of any unlawful discriminatory practice or to attempt to  
18 do so;

19 (2) engage in any form of threats, reprisal or  
20 discrimination against any person who has opposed any unlawful  
21 discriminatory practice or has filed a complaint, testified or  
22 participated in any proceeding under the Human Rights Act; or

23 (3) willfully obstruct or prevent any person  
24 from complying with the provisions of the Human Rights Act or to  
25 resist, prevent, impede or interfere with the commission or any

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1 of its members, staff or representatives in the performance of  
2 their duties under the Human Rights Act; or

3 J. any employer to refuse or fail to accommodate a  
4 person's physical or mental handicap or serious medical  
5 condition, unless such accommodation is unreasonable or an undue  
6 hardship."

7 Section 2. Section 28-1-9 NMSA 1978 (being Laws 1969,  
8 Chapter 196, Section 8, as amended) is amended to read:

9 "28-1-9. EXEMPTIONS.--Nothing contained in the Human  
10 Rights Act shall:

11 A. apply to any single-family dwelling sold, leased,  
12 subleased or rented by an owner without the making of any  
13 notice, statement or advertisement with respect to the sale,  
14 lease, sublease or rental of a dwelling unit that indicates any  
15 preference, limitation or discrimination based on race, color,  
16 religion, national origin, ancestry, sex, sexual orientation or  
17 gender identity. This exemption is subject to these further  
18 reservations:

19 (1) to qualify for the exemption, the seller  
20 must not be an owner of or own or have reserved any interest in  
21 more than three single-family dwellings; and

22 (2) if the seller does not currently live in  
23 the dwelling or he was not the most recent occupant, the  
24 exemption granted in this section shall only apply to one sale  
25 in twenty-four months;

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1           B. bar any religious or denominational institution  
2 or organization that is operated, supervised or controlled by or  
3 that is operated in connection with a religious or  
4 denominational organization from limiting admission to or giving  
5 preference to persons of the same religion or denomination or  
6 from making selections of buyers, lessees or tenants as are  
7 calculated by the organization or denomination to promote the  
8 religious or denominational principles for which it is  
9 established or maintained, unless membership in the religious or  
10 denominational organization is restricted on account of race,  
11 color, national origin or ancestry;

12           C. bar any religious or denominational institution  
13 or organization that is operated, supervised or controlled by or  
14 that is operated in connection with a religious or  
15 denominational organization from imposing discriminatory  
16 employment or renting practices that are based upon sexual  
17 orientation or gender identity; provided, that the provisions of  
18 the Human Rights Act with respect to sexual orientation and  
19 gender identity shall apply to any other:

20                   (1) for-profit activities of a religious or  
21 denominational institution or religious organization subject to  
22 the provisions of Section 511(a) of the Internal Revenue Code of  
23 1986, as amended; or

24                   (2) nonprofit activities of a religious or  
25 denominational institution or religious organization subject to

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1 the provisions of Section 501(c)(3) of the Internal Revenue Code  
2 of 1986, as amended;

3 D. apply to rooms or units in dwellings containing  
4 living quarters occupied or intended to be occupied by no more  
5 than four families living independently of each other, if the  
6 owner actually maintains and occupies one of the living quarters  
7 as his residence;

8 E. apply to public restrooms, public showers, public  
9 dressing facilities or sleeping quarters in public institutions,  
10 where the preference or limitation is based on sex; and

11 F. prevent the mandatory retirement of an employee  
12 upon reaching the age of sixty-five years or older, if the  
13 employer is operating under a retirement plan that meets the  
14 requirements of Public Law 93-406, the Employee Retirement  
15 Income Security Act of 1974[; ~~and~~

16 ~~G. apply to a business that employs fourteen or~~  
17 ~~fewer full-time employees]."~~

18 Section 3. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2004.